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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/675,326	09/29/2003	Steven M. Falk	OM106DIV	5274
26009	7590	04/13/2004	EXAMINER	
ROGER M. RATHBUN 13 MARGARITA COURT HILTON HEAD ISLAND, SC 29926			ROBINSON, DANIEL LEON	
		ART UNIT	PAPER NUMBER	
		3742		

DATE MAILED: 04/13/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/675,326	FALK, STEPHEN
	Examiner Daniel I. Robinson	Art Unit 3742

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1)  Responsive to communication(s) filed on 29 September 2003.
- 2a)  This action is FINAL.                                    2b)  This action is non-final.
- 3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4)  Claim(s) 1-6 and 13-16 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5)  Claim(s) \_\_\_\_\_ is/are allowed.
- 6)  Claim(s) 1-6 and 13-16 is/are rejected.
- 7)  Claim(s) \_\_\_\_\_ is/are objected to.
- 8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9)  The specification is objected to by the Examiner.
- 10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a)  All    b)  Some \* c)  None of:
    1.  Certified copies of the priority documents have been received.
    2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|  | 6) <input type="checkbox"/> Other: _____                                    |

***Response to Amendment***

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-4, 6, and 13-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Goldberg et al.(U.S.Pat.6,296,606) in view of Patel(U.S.Pat.4,331,161). Goldberg discloses a patient thermal support device that shows many of the features of the claimed invention save the explicitly claimed features of a temperature sensor affixed to a patient. Goldberg shows two inputs to a microprocessor controller from two temperature sensors 202 and 206, a temperature display, a radiant heater 56 and a heater 76. The microprocessor compares the sensor outputs to a setpoint temperature or a default setpoint temperature and continuously calculates a setpoint error. The microprocessor operates to drive the error(derivative with respect to time) to zero and to activate an alarm if needed if a range of values is exceeded. A holdoff period is initiated upon startup. The alarm can be associated with either an under or over temperature condition(Figs. 17-23). Patel discloses a patient sensor continuity detector that explicitly shows a temperature sensor affixed to a patient Figs. 1-5. It would have been obvious to one of ordinary skill in the art at the time of the claimed invention to use a thermistor affixed to a patient as taught by Patel because the thermister is well known in the art as a temperature sensor and can be affixed to a patient with normal adhesive tape to ascertain the patient's skin temperature.

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Goldberg in view of Patel as applied to claims 1-4 and 13-16 above, and further in view of Koch(U.S.Pat.6,048,304). Goldberg in view of Patel does not show an analog to digital converter at the temperature sensor output. Koch discloses a process of control that shows an A/D converter at an output. It would have been obvious to one of ordinary skill in the art at the time of the claimed invention to use an A/D converter at the sensor output because the values are easily stored in a digital memory.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Goldberg'634, Moll, Kobayashi, and Goldberg'149 are cited to show structure similar to the claimed invention.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel I. Robinson whose telephone number is 703 306-9043. The examiner can normally be reached on M-F 5:30am-2:30pm.

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

DANIEL ROBINSON  
PATENT EXAMINER



Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

DANIEL ROBINSON  
PATENT EXAMINER

dlr

A handwritten signature in black ink, appearing to read "dlr" followed by a stylized surname.